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In the Supreme Court of the United States

SUSAN JINKS, PETITIONER

v.

RICHLAND COUNTY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 28 U.S.C. 1367(d), the tolling provision of the federal supplemental jurisdiction statute, is constitutional as applied to claims against a county defendant.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Constitutional and statutory provisions involved	2
Statement	3
Summary of argument	15
Argument:	
The tolling provision of 28 U.S.C. 1367(d) is constitutional on its face and as applied to state-law claims asserted against a unit of local government	18
A. The supplemental jurisdiction provisions of 28 U.S.C. 1367(a) and (c) are a valid exercise of Congress's authority to define the jurisdiction of the federal courts	18
1. Under Article III of the Constitution, the judicial power to decide "cases" arising under federal law extends to the resolution of state-law claims that are related to the federal cause of action	18
2. In 28 U.S.C. 1367(a) and (c), Congress sought to promote the efficient resolution of suits raising related federal- and state-law claims, while avoiding unnecessary state-law rulings by the federal courts	20
B. The tolling provision of 28 U.S.C. 1367(d) is valid as a measure "necessary and proper" to achieve the objectives of the related provisions defining the pendent-claim jurisdiction of the federal courts	21

Table of Contents—Continued: Page

1. Section 1367(d) preserves the balance struck in Section 1367(a) and (c) between efficient resolution of related claims and avoidance of unnecessary state-law rulings by the federal courts 21
2. Section 1367(d) is a constitutionally permissible means of achieving Congress's objectives 25

C. Section 1367(d) is constitutional as applied to state-law claims against a county defendant 31
1. Local governments have no constitutional immunity from private suits authorized by Congress 32
2. Congress's reasons for enacting Section 1367(d) apply with full force to suits against local governments 34
3. The Court's decision in *Raygor* supports the application of Section 1367(d) to counties and municipalities 34

Conclusion 37

TABLE OF AUTHORITIES

Cases:

Alden v. *Maine*, 527 U.S. 706 (1999) 32
Aldinger v. *Howard*, 427 U.S. 1 (1976) 7
Blatchford v. *Native Vill. of Noatak*, 501 U.S. 775 (1991) 35
Board of Trs. of the Univ. of Ala. v. *Garrett*, 531 U.S. 356 (2001) 32
Carnegie-Mellon Univ. v. *Cohill*, 484 U.S. 343 (1988) 6
City of Chicago v. *International Coll. of Surgeons*, 522 U.S. 156 (1997) 8

Cases—Continued: Page

Cooley v. *Pennsylvania Hous. Fin. Agency*, 830 F.2d 469 (3d Cir. 1987) 6
Duckworth v. *Franzen*, 780 F.2d 645 (7th Cir. 1985), cert. denied, 479 U.S. 816 (1986) 6
Edwards v. *Okaloosa County*, 5 F.3d 1431 (11th Cir. 1993) 6
Felder v. *Casey*, 487 U.S. 131 (1988) 26
Financial Gen. Bankshares, Inc. v. *Metzger*, 680 F.2d 768 (D.C. Cir. 1982) 6
Finley v. *United States*, 490 U.S. 545 (1989) 5, 7
Giardiello v. *Balboa Ins. Co.*, 837 F.2d 1566 (11th Cir. 1988) 6
Graham v. *John Deere Co.*, 385 U.S. 1 (1966) 25
Henson v. *Columbus Bank & Trust Co.*, 651 F.2d 320 (5th Cir. 1981) 6
Hodel v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264 (1981) 27
Howlett v. *Rose*, 496 U.S. 356 (1990) 27, 28, 32
M'Culloch v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819) 25
Minneapolis & St. Louis R.R. v. *Bombolis*, 241 U.S. 211 (1916) 28
Mondou v. *New York, New Haven & Hartford R.R.*, 223 U.S. 1 (1912) 28
Monell v. *New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978) 34
Mt. Healthy City Bd. of Educ. v. *Doyle*, 429 U.S. 274 (1977) 32-33
Nash v. *Florida Indus. Comm'n*, 389 U.S. 235 (1967) 23
New York v. *United States*, 505 U.S. 144 (1992) 27
O'Brien v. *Continental Ill. Nat'l Bank & Trust Co.*, 593 F.2d 54 (7th Cir. 1979) 6
Order of R.R. Telegraphers v. *Railway Express Agency*, 321 U.S. 342 (1944) 27

Cases—Continued: Page

Pennhurst State Sch. & Hosp. v. *Halderman*, 465 U.S. 89 (1984) 19
Raygor v. *Regents of the Univ. of Minn.*, 122 S. Ct. 999 (2002) 11, 12, 19, 34, 35, 36
Regents of the Univ. of Cal. v. *Doe*, 519 U.S. 425 (1997) 32
Stewart v. *Kahn*, 78 U.S. (11 Wall.) 493 (1870) 16, 28, 29
Terral v. *Burke Constr. Co.*, 257 U.S. 529 (1992) 24
Testa v. *Katt*, 330 U.S. 386 (1947) 28
United Mine Workers v. *Gibbs*, 383 U.S. 715 (1966) 4, 5, 18, 19, 20, 21, 22, 25
Will v. *Michigan Dep't of State Police*, 491 U.S. 58 (1989) 36

Constitution and statutes:

U.S. Const.:
Art. I 30
§ 8, Cl. 9 26
§ 8, Cl. 18 (Necessary and Proper Clause) 13, 14, 25
Art. III 5, 13, 15, 18, 20
§ 2 18
Art. VI, Cl. 2 (Supremacy Clause) 23, 27, 28, 33
Amend. VIII 13
Amend. XI 19, 34
Amend. XIV 32
§ 5 26
Federal Courts Study Committee Implementation Act of 1990, Pub. L. No. 101-650, Tit. III, § 310(a), 104 Stat. 5113 8
Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525 30
28 U.S.C. 1331 23
28 U.S.C. 1367 ..... 2, 3, 8, 10, 15, 35
28 U.S.C. 1367(a) ..... *passim*
28 U.S.C. 1367(c) ..... *passim*

Statutes—Continued: Page

28 U.S.C. 1367(c)(3) 9, 13, 20
28 U.S.C. 1367(d) ..... *passim*
28 U.S.C. 1447 7
42 U.S.C. 1983 ..... 12, 23, 24, 26, 34, 36
South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.* (Law. Co-op. 2002) 12

Miscellaneous:

American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts* (1969) 10, 11, 27, 30, 31
Federal Courts Study Committee Implementation Act and Civil Justice Reform Act: Hearing Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary, 101st Cong., 2d Sess. (1990) 8, 21
H.R. Rep. No. 734, 101st Cong., 2d Sess. (1990) 8, 10
Denis McLaughlin, *The Federal Supplemental Jurisdiction Statute—A Constitutional and Statutory Analysis*, 24 Ariz. St. L.J. 849 (1992) 6, 8, 24
Thomas M. Mengler et al., *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213 (1991) 10, 11
John B. Oakley, *Prospectus for the American Law Institute's Federal Judicial Code Revision Project*, 31 U.C. Davis L. Rev. 855 (1998) 24
Report of the Federal Courts Study Committee (Apr. 2, 1990) 8
Arthur D. Wolf, *Codification of Supplemental Jurisdiction: Anatomy of a Legislative Proposal*, 14 W. New Eng. L. Rev. 1 (1992) 8

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OPINIONS BELOW

The opinion of the Supreme Court of South Carolina (Pet. App. 2a-10a) is reported at 563 S.E.2d 104. The judgment of the South Carolina Court of Common Pleas (Pet. App. 11a-12a) is not reported. A prior opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 13a-20a) is unpublished, but the decision is noted at 163 F.3d 598 (Table). A prior order of the United States District Court for the District of South Carolina (Pet. App. 21a-22a) is not reported.

JURISDICTION

The judgment of the Supreme Court of South Carolina (Pet. App. 11a-12a) was entered on April 22, 2002. The petition for a writ of certiorari was filed on July 18, 2002, and was granted on October 21, 2002. The jurisdiction of this Court rests on 28 U.S.C. 1257(a). On November 12, 2002, the Court granted the motion of

the United States to intervene in the case pursuant to 28 U.S.C. 2403.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Pertinent constitutional provisions are reproduced at Pet. App. 26a-29a.

2. Section 1367 of Title 28, United States Code, provides in relevant part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal Statute, in any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all claims that are so related to claims within the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve joinder or intervention of additional parties.
>
> * * * * *
>
> (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
>
> (1) the claim raises a novel or complex issue of State law;
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;

> (3) the district court has dismissed all claims over which it has original jurisdiction;
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.
>
> (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

28 U.S.C. 1367. The question presented here is whether the application of Section 1367(d) to extend the statute of limitations in a suit against a county such as respondent, which is entitled to a degree of state-law immunity, raises any constitutional difficulty.

STATEMENT

The federal supplemental jurisdiction statute, 28 U.S.C. 1367, was enacted in 1990. Section 1367(a) and (c) codify pre-existing judge-made rules and define the circumstances under which a federal court should exercise pendent jurisdiction over a state-law claim that is factually related to a federal cause of action. Section 1367(d) provides that, when a pendent state-law claim asserted under Section 1367(a) is dismissed by the federal court and subsequently refiled in state court, the applicable statute of limitations is tolled during the pendency of the federal action and for 30 days thereafter. In the present case, the South Carolina Supreme Court held that Section 1367(d) is unconstitutional as

applied to a state-law claim against a county defendant, on the ground that the federal statute impermissibly intrudes upon the State's authority to define the conditions upon which its political subdivisions will be subject to suit.

1. a. In *United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966), this Court addressed the question whether and under what circumstances a federal district court, in adjudicating a federal cause of action, may also resolve related state-law claims. Although no federal statute spoke directly to the question, the Court articulated a broad view of the power of federal courts to adjudicate "pendent" state-law claims, even where those claims standing alone would not come within the court's jurisdiction. The Court explained:

> Pendent jurisdiction, in the sense of judicial *power*, exists whenever there is a claim [arising under federal law], and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional "case." The federal claim must have substance sufficient to confer subject matter jurisdiction on the court. The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.

Id. at 725 (footnotes and citation omitted). The decision in *Gibbs* reflected this Court's determination "that federal courts have 'pendent' claim jurisdiction—that is, jurisdiction over nonfederal claims between parties

litigating other matters properly before the court—to the full extent permitted by the Constitution." *Finley* v. *United States*, 490 U.S. 545, 548 (1989).

The Court in *Gibbs* explained, however, that the Article III power to resolve pendent state-law claims "need not be exercised in every case in which it is found to exist." 383 U.S. at 726. The Court observed that "[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." *Ibid.* The Court explained that the exercise of pendent-claim jurisdiction is ordinarily inappropriate if "the federal claims are dismissed before trial," or if "it appears that the state issues substantially predominate." *Ibid.* The Court also noted that although the presence or absence of Article III *power* to adjudicate a pendent claim can ordinarily be determined at the outset of a case, "the issue whether pendent jurisdiction has been properly assumed is one which remains open throughout the litigation. Pretrial procedures or even the trial itself may reveal a substantial hegemony of state law claims, or likelihood of jury confusion, which could not have been anticipated at the pleading stage." *Id.* at 727. The Court thus expressly contemplated the possibility that a pendent claim over which the district court initially and appropriately assumed jurisdiction might properly be dismissed at a later point in the litigation.

b. The Court in *Gibbs* contemplated that, if a district court found the continued exercise of pendent-claim jurisdiction to be inappropriate in a particular case, the state claims would "be dismissed without prejudice and left for resolution to state tribunals." 383 U.S. at 726-727. In practice, however, the district courts' exercise of discretion to dismiss such claims was often skewed

by the concern that, if dismissed, a state-law claim might subsequently be deemed untimely when refiled in state court. See Denis McLaughlin, *The Federal Supplemental Jurisdiction Statute—A Constitutional and Statutory Analysis*, 24 Ariz. St. L.J. 849, 983 (1992). Indeed, several courts of appeals held it to be an abuse of discretion for a district court to dismiss a pendent claim without considering whether the claim would be time-barred in state court.[1] To avoid leaving plaintiffs without a state-law remedy, the district courts would retain jurisdiction over cases that, apart from the time-bar concern, properly belonged in state court.[2]

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[1] See, *e.g.*, *Giardiello* v. *Balboa Ins. Co.*, 837 F.2d 1566, 1571 (11th Cir. 1988); *Cooley* v. *Pennsylvania Hous. Fin. Agency*, 830 F.2d 469, 476 (3d Cir. 1987); *Henson* v. *Columbus Bank & Trust Co.*, 651 F.2d 320, 325 (5th Cir. 1981) (per curiam); *O'Brien* v. *Continental Ill. Nat'l Bank & Trust Co.*, 593 F.2d 54, 64-65 (7th Cir. 1979). Some courts made a discretionary dismissal of pendent claims contingent upon the defendant's waiver of any applicable statute of limitations defense. See, *e.g.*, *Edwards* v. *Okaloosa County*, 5 F.3d 1431, 1435 n.3 (11th Cir. 1993); *Duckworth* v. *Franzen*, 780 F.2d 645, 657 (7th Cir. 1985), cert. denied, 479 U.S. 816 (1986); *Financial Gen. Bankshares, Inc.* v. *Metzger*, 680 F.2d 768, 778 (D.C. Cir. 1982).

[2] This Court expressed a similar concern in addressing the related question whether a district court may remand to state court, rather than dismiss, pendent state-law claims in cases originally filed in state court and then removed to federal court. The Court concluded that "a remand generally will be preferable to a dismissal when the statute of limitations on the plaintiff's state-law claims has expired before the federal court has determined that it should relinquish jurisdiction over the case." *Carnegie-Mellon Univ.* v. *Cohill*, 484 U.S. 343, 351-352 (1988). In that situation, the Court observed, dismissal "may work injustice to the plaintiff," because "a dismissal will foreclose the plaintiff from litigating his claims." *Id.* at 352. Congress subsequently enacted

c. In *Finley*, this Court addressed the distinct question of "pendent-*party* jurisdiction, that is, jurisdiction over parties not named in any claim that is independently cognizable by the federal court." 490 U.S. at 549. The Court "assume[d], without deciding, that the constitutional criterion for pendent-party jurisdiction is analogous to the constitutional criterion for pendent-claim jurisdiction." *Ibid.* The Court held, however, that absent express congressional authorization, it would not construe the applicable jurisdictional statutes to permit the addition of pendent parties against whom no claim had been asserted that was independently within the jurisdiction of the district court. *Ibid.*; see *id.* at 549-556; *Aldinger* v. *Howard*, 427 U.S. 1, 14-19 (1976). Moreover, although the Court in *Finley* disavowed any intent to revisit the holding of *Gibbs* (see 490 U.S. at 556), the Court observed that *Gibbs* was a departure from the usual rule that a federal court may exercise jurisdiction only to the extent expressly authorized by Congress. See *id.* at 547-548, 556. The Court noted, in addition, that the body of judge-made law regarding the permissible exercise of pendent jurisdiction "can of course be changed by Congress." *Id.* at 556.

2. a. The year after this Court's decision in *Finley*, the Federal Courts Study Committee recommended that "Congress expressly authorize federal courts to hear any claim arising out of the same 'transaction or occurrence' as a claim within federal jurisdiction,

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legislation to make a remand mandatory, rather than discretionary, when, as in *Cohill*, subsequent events deprive the district court of subject-matter jurisdiction. See 28 U.S.C. 1447. A remand to state court is not an available option, however, when the plaintiff's suit is initially filed in federal court.

including claims, within federal question jurisdiction, that require the joinder of additional parties." *Report of the Federal Courts Study Committee* 47 (Apr. 2, 1990); see *Federal Courts Study Committee Implementation Act and Civil Justice Reform Act: Hearing Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 2d Sess. 155-156 (1990) (*House Hearing*) (statement of Judge Deanell R. Tacha, Chairman, Judicial Conference Committee On The Judicial Branch, expressing support for supplemental jurisdiction legislation); *id.* at 686 (letter from Professor Arthur D. Wolf noting academic support for such legislation). Congress responded by enacting the Federal Courts Study Committee Implementation Act of 1990, Pub. L. No. 101-650, Tit. III, § 310(a), 104 Stat. 5113, which added a new 28 U.S.C. 1367 to the United States Code. See generally Denis McLaughlin, *supra*; Arthur D. Wolf, *Codification of Supplemental Jurisdiction: Anatomy of a Legislative Proposal*, 14 W. New Eng. L. Rev. 1 (1992). Section 1367 generally codifies the doctrine of pendent-claim jurisdiction that was recognized in *Gibbs*. See H.R. Rep. No. 734, 101st Cong., 2d Sess. 29 n.15 (1990) (*House Report*); *City of Chicago* v. *International Coll. of Surgeons*, 522 U.S. 156, 164-165 (1997). Section 1367 also provides the congressional authorization for pendent-party jurisdiction that the Court had found lacking in *Finley*. See *House Report* 29. Section 1367 authorizes both pendent-claim and pendent-party jurisdiction under the general rubric of supplemental jurisdiction. See Pet. App. 5a n.4.

Section 1367(a) provides as a general rule that

> in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve joinder or intervention of additional parties.

28 U.S.C. 1367(a). Section 1367(c) identifies various circumstances in which the district court may decline to adjudicate pendent state-law claims even though the requirements of Section 1367(a) are satisfied. Section 1367(c) states that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if," *inter alia*, "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. 1367(c)(3).

b. The provision specifically at issue in this case is 28 U.S.C. 1367(d), which governs the refiling of claims in state court after a federal-court lawsuit has been dismissed. Section 1367(d) states: "The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." The purpose of this provision is to hold a plaintiff harmless for a decision to file a pendent state-law claim in federal court, if the federal-law claim is subsequently dismissed, and to obviate the need to file a duplicative action in state court. Section 1367(d)'s effect is, under some circumstances, to require a state court to treat a state-law claim as timely filed even though the claim would be regarded as time-barred

under applicable state-law limitations and tolling principles.

Three law professors who had assisted in the drafting of Section 1367 (see *House Report* 27 n.13) explained shortly after the statute's enactment that Section 1367(d) mirrors a tolling provision that was proposed as part of the American Law Institute's 1969 recommendation to codify pendent-claim jurisdiction. Thomas M. Mengler et al., *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213, 216 n.28 (1991); see *Study of the Division of Jurisdiction Between State and Federal Courts* (1969) (*ALI Study*).[3] The *ALI Study* considered, and rejected, a possible constitutional objection to the proposed tolling provision, namely "that the statute of limitations governing a state cause of action is a matter reserved exclusively for state determination, and that it is an invalid exercise of federal power to direct a state court to entertain such a cause if it would be barred under the state's own law." *ALI Study* 453. The *ALI Study* explained:

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[3] Specifically, the provision proposed by the American Law Institute in 1969 would have stated:

> (b) If any claim in an action timely commenced in a federal court is dismissed for lack of jurisdiction over the subject matter of the claim, a new action on the same claim brought in another court shall not be barred by a statute of limitations that would not have barred the original action had it been commenced in that court, if such new action is brought in a proper court, federal or State, within thirty days after dismissal of the original claim has become final or within such longer period as may be available under applicable State law.

ALI Study 65.

> Congress has the authority to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, and among these is the judicial power conferred by Article III. It is plainly appropriate, as an aid to the exercise of federal jurisdiction, to see to it that a plaintiff is not discouraged from seeking a federal forum if he believes that such a forum is available. One way to achieve this goal is to assure him that he will not lose his cause of action if his belief turns out to be erroneous. Moreover, it is clearly in the interest of sound judicial administration to adopt a procedure under which a plaintiff need not file simultaneous actions in two courts in order to ensure that his action will not be barred by the statute of limitations following a dismissal in one of them.

Id. at 453-454; see Thomas M. Mengler et al., *supra*, 74 Judicature at 216 n.28 (quoting *ALI Study* 65).

c. In *Raygor* v. *Regents of the University of Minnesota*, 122 S. Ct. 999 (2002), this Court addressed the application of 28 U.S.C. 1367(a) and (d) to pendent state-law claims asserted against an arm of the State. Based on the absence of any express statutory reference to such claims, the Court held that Section 1367(a)'s grant of pendent-claim jurisdiction "does not extend to claims against nonconsenting state defendants." 122 S. Ct. at 1005. The Court next considered whether Section 1367(d) "tolls the statute of limitations for claims against nonconsenting States that are asserted under § 1367(a) but subsequently dismissed on Eleventh Amendment grounds." *Ibid.* The Court explained that application of the statute in that setting "raises serious doubts about the constitutionality of the

provision," *ibid.*, because "allowing federal law to extend the time period in which a state sovereign is amenable to suit in its own courts at least affects the federal balance in an area that has been a historic power of the States, whether or not it constitutes an abrogation of state sovereign immunity," *id.* at 1006. Finding no clear evidence of congressional intent that Section 1367(d) should apply to such claims, see *id.* at 1006-1007, the Court concluded that it "w[ould] not read § 1367(d) to apply to dismissals of claims against nonconsenting States dismissed on Eleventh Amendment grounds," *id.* at 1007. The Court did not address the constitutionality of Section 1367(d) as applied to consenting States or to defendants other than States, and it nowhere suggested that anything other than the traditional federal-law principles used to determine whether an entity is an arm of the State would define the scope of Section 1367(a) and (d).

3. a. In October 1994, Carl Jinks was arrested and confined at the Richland County detention center. He died at the detention center four days later. In June 1996, petitioner Susan Jinks, acting as the personal representative of her husband's estate, brought suit against respondent Richland County and two individual defendants in federal district court under 42 U.S.C. 1983. Petitioner also alleged supplemental state-law claims of outrage and negligence under the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.* (Law. Co-op. 2002). Pet. App. 3a.

On November 20, 1997, the district court entered summary judgment for the defendants on the Section 1983 claims. See Pet. App. 21a. On December 3, 1997, the district court issued an additional order stating that "[s]ince all federal claims in this action have been resolved, this Court declines to exercise jurisdiction

over the remaining state claims." *Id.* at 21a-22a. The court therefore dismissed those claims without prejudice pursuant to 28 U.S.C. 1367(c)(3). Pet. App. 22a.[4]

b. In December 1997, sixteen days after the federal district court dismissed the state-law claims, petitioner filed suit in state court against respondent and the detention center physician, asserting her state-law claims. Pet. App. 3a. Respondent argued that the claims against it were barred by the two-year statute of limitations established by the South Carolina Tort Claims Act. See *ibid.* The trial court rejected that contention on the basis of Section 1367(d), and the jury ultimately rendered a verdict of $80,000 in petitioner's favor for wrongful death. See *id.* at 2a, 11a.

The Supreme Court of South Carolina reversed. Pet. App. 2a-10a. The state supreme court recognized that, under Article III and the Necessary and Proper Clause, U.S. Const. Art. I, § 8, Cl. 18, Congress has the power to regulate practice and procedure in federal courts. See *id.* at 5a-6a. The court also held that, as a general matter, the tolling provision in 28 U.S.C. 1367(d) is a constitutionally "necessary" means of regu-

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[4] The court of appeals eventually affirmed the district court's grant of summary judgment with respect to petitioner's Section 1983 claims. Pet. App. 13a-20a. The court held that petitioner could not establish a violation of the Eighth Amendment because the evidence, taken in the light most favorable to her claims, was insufficient to show that respondent acted with deliberate indifference or reckless disregard for Carl Jinks's medical needs. Pet. App. 16a-18a. The court also agreed with the district court that "the only standards to which [petitioner] appeals are South Carolina state standards, which, as standards grounded in state law, cannot form the basis for an allegation that federal constitutional rights were violated." *Id.* at 18a (footnote omitted).

lating federal court practice. See Pet. App. 6a-7a. The court explained that Section 1367(d)

> affects federal practice as it allows litigants to pursue actions in federal court without giving up access to state court in the event the federal jurisdictional basis is determined not to exist. It governs federal practice and procedure as it eliminates the need for federal judges to retain supplemental claims which would be dismissed as stale if pursued in state court. Section 1367(d) is a useful "aid to the exercise of federal jurisdiction," and, therefore, is "necessary" within the meaning of the Necessary and Proper Clause.

Id. at 7a (footnote omitted).

The court concluded, however, that "as applied to the States and their political subdivisions in tort actions, passage of § 1367(d) is not 'proper' within the meaning of the Necessary and Proper Clause. In these circumstances, the tolling provision interferes with the State's sovereign authority to establish the extent to which its political subdivisions are subject to suit." Pet. App. 7a. The court explained that the State's Tort Claims Act "provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.* at 9a. The court found that Section 1367(d) "potentially exposes political subdivisions to litigation and liability after the limitations period established by the State has expired * * *, thereby interfering with the State's sovereignty in violation of the Tenth Amendment and the Necessary and Proper Clause." *Ibid.*

The Supreme Court of South Carolina recognized that its decision might have the practical effect of

deterring a plaintiff from filing suit in federal court against one of the State's political subdivisions. Pet. App. 9a. The court "conclude[d], however, that a party's ability to choose its forum should not prevail over the State's sovereign authority to establish the terms under which its political subdivisions may be sued." *Id.* at 9a-10a. The court also observed that, even under its ruling, a plaintiff would retain the ability "to prosecute one action joining all federal and state law claims" by bringing suit in state court. *Id.* at 10a.

SUMMARY OF ARGUMENT

A. The provisions of 28 U.S.C. 1367(a) and (c), which govern a federal district court's exercise of jurisdiction over state-law claims that are pendent to a federal cause of action, are a valid exercise of Congress's authority to define the jurisdiction of the federal courts. This Court's decisions make clear that a "case" may arise under federal law even if some individual claims rest on state law, and that the federal judicial power under Article III extends to the adjudication of the entire "case." Both the basic grant of pendent-claim jurisdiction contained in Section 1367(a), and Section 1367(c)'s catalogue of circumstances in which a federal court may decline to adjudicate pendent state-law claims, are patterned closely on the judge-made rules that governed before the enactment of Section 1367. Those judge-made rules precluded the exercise of federal-court jurisdiction over pendent state-law claims against a nonconsenting State, but imposed no limits on similar claims against counties and municipalities. Likewise, Section 1367(a) and (c) apply to counties and municipalities in the same way they apply to non-governmental defendants. Taken together, Section 1367(a) and (c) reflect Congress's effort to strike an

appropriate balance between the efficient resolution of related federal- and state-law claims comprising a single "case," and the avoidance of unnecessary state-law rulings by the federal courts.

B. The statutory provision at issue in this case, 28 U.S.C. 1367(d), is integral to preserving the balance of interests accomplished by Section 1367(a) and (c). Section 1367(d) ensures that a plaintiff can exercise his federal rights to seek federal-court review of a federal cause of action, and to join related state-law claims in a single judicial proceeding, without putting at risk his ability to prosecute his state-law claims to their conclusion. Section 1367(d) also ensures that federal district courts, in deciding whether to retain jurisdiction over pendent state-law claims pursuant to 28 U.S.C. 1367(a), may apply the criteria set forth in Section 1367(c) free from concern that the state-law claims might be dismissed as time-barred if they are refiled in state court.

The tolling rule in Section 1367(d) is a permissible means of achieving Congress's objectives. Section 1367(d) is minimally intrusive on state prerogatives, since it preserves a plaintiff's state-law claim only if that claim is asserted in federal court within the limitations period prescribed by *state law*. Congress's authority to preempt state law, and to require state courts to enforce federal rights, is well settled. Most specifically, this Court's decision in *Stewart* v. *Kahn*, 78 U.S. (11 Wall.) 493 (1870), establishes that Congress may require state courts to apply a federal tolling rule in adjudicating state-law causes of action, where preemption of the otherwise-applicable state-law rule is a "necessary and proper" means of carrying into effect Congress's enumerated powers.

C. Section 1367(d) is constitutional as applied to state-law claims against local governments. Counties and municipalities have no constitutional immunity from private suits authorized by Congress, and applying Section 1367(d) to such defendants raises no constitutional difficulties. Moreover, the considerations that generally underlie Section 1367(d) apply with full force to suits against local governments. In the present case, the South Carolina Supreme Court's refusal to enforce the federal tolling provision caused petitioner to forfeit her state-law claims as a consequence of exercising her federal rights—precisely the hardship that Section 1367(d) was intended to prevent.

This Court's decision in *Raygor* reinforces the conclusion that Section 1367(d) may properly be applied to respondent. While acknowledging that the language of Section 1367(d) is broad, the Court in *Raygor* nonetheless refused to conclude that Section 1367(a) and (d) apply to nonconsenting States. The Court in *Raygor* recognized that the States generally enjoy a constitutional immunity from private suits, and it relied on the interpretive rule that, absent clear evidence of congressional intent, federal statutes will not be read to authorize private suits against States and state agencies. That presumption does not apply to counties and municipalities. Application of Section 1367(d) to respondent neither raises constitutional concerns nor upsets the federal-state balance. Therefore, the broad language of Section 1367(d) applies fully to respondent.

ARGUMENT

THE TOLLING PROVISION OF 28 U.S.C. 1367(d) IS CONSTITUTIONAL ON ITS FACE AND AS APPLIED TO STATE-LAW CLAIMS ASSERTED AGAINST A UNIT OF LOCAL GOVERNMENT

A. The Supplemental Jurisdiction Provisions Of 28 U.S.C. 1367(a) And (c) Are A Valid Exercise Of Congress's Authority To Define The Jurisdiction Of The Federal Courts

The South Carolina Supreme Court did not cast doubt on the constitutionality of 28 U.S.C. 1367(a) and (c), which govern a federal district court's exercise of jurisdiction over state-law claims that are pendent to a federal cause of action. The validity of those provisions cannot reasonably be questioned. Nor is there any basis for suggesting that those provisions would not apply to suits against a county or municipal defendant—whether consenting or not.

1. Under Article III of the Constitution, the judicial power to decide "cases" arising under federal law extends to the resolution of state-law claims that are related to the federal cause of action

Under Article III, Section 2 of the Constitution, the federal "judicial Power" extends to, *inter alia*, "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority." As this Court's decisions make clear, a "Case" may "aris[e] under" the Constitution and laws of the United States even if some individual claims are founded on state law; and the federal "judicial Power" extends to the entire "Case" as so defined. *Gibbs*, 383 U.S. at 725. "The state and federal claims must derive from a common nucleus of operative fact. But if, considered without

regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is *power* in federal courts to hear the whole." *Ibid.*

Under 28 U.S.C. 1367(a), the basic power of the federal district courts to exercise jurisdiction over pendent state-law claims is defined by express reference to that constitutional standard. Thus, the statute provides that "in any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. 1367(a). This Court's decisions make clear that Section 1367(a)'s grant of authority to resolve pendent state-law claims is constitutional. Consistent with its earlier holding that the Eleventh Amendment precludes a federal court from adjudicating pendent state-law claims against nonconsenting States, see *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 120 (1984), this Court in *Raygor* held that Section 1367(a) does not extend to claims against nonconsenting state defendants. See 122 S. Ct. at 1005. But there is no basis for questioning Section 1367(a)'s application to counties or municipalities.

2. In 28 U.S.C. 1367(a) and (c), Congress sought to promote the efficient resolution of suits raising related federal-and state-law claims, while avoiding unnecessary state-law rulings by the federal courts

Section 1367(c) identifies various circumstances in which a federal district court may decline to adjudicate a pendent state-law claim even though the case as a whole satisfies the requirements of Section 1367(a). Of particular relevance to this case, Section 1367(c)(3) authorizes the court to dismiss the pendent claim if "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. 1367(c)(3). The provisions of Section 1367(c) are not constitutionally compelled. Congress reasonably determined, however, that the district courts should not be required to adjudicate pendent state-law claims in every circumstance in which Article III would permit the exercise of federal judicial power. Section 1367(c) is consistent both with the *Gibbs* Court's general observation that "pendent jurisdiction is a doctrine of discretion, not of plaintiff's right," 383 U.S. at 726, and with the specific factors identified by the Court as particularly relevant to the appropriate exercise of that discretion, see *id.* at 726-727. Compare, *e.g.*, 28 U.S.C. 1367(c)(3) with *Gibbs*, 383 U.S. at 726 ("if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well").

Taken together, 28 U.S.C. 1367(a) and (c) reflect Congress's effort to balance federal and state interests and to assist litigants in achieving just and expeditious resolution of their disputes. Section 1367(a) reflects Congress's determination that, as a general matter, federal-and state-law claims should be tried together if they are sufficiently related so as to comprise a single Article III "case." At the same time, Congress recog-

nized that in some circumstances questions of state law are more appropriately remitted to state tribunals, notwithstanding the presence, at least at the outset of the litigation, of a related federal claim.[5] Permitting dismissal of state-law claims in the circumstances identified in Section 1367(c) avoids undue intrusion on state-court prerogatives, and it furthers the litigants' interest in obtaining resolution of their dispute by the judges having greatest familiarity with the governing law. Compare *Gibbs*, 383 U.S. at 726 ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.").

B. The Tolling Provision Of 28 U.S.C. 1367(d) Is Valid As A Measure "Necessary And Proper" To Achieve The Objectives Of The Related Provisions Defining The Pendent-Claim Jurisdiction Of The Federal Courts

1. Section 1367(d) preserves the balance struck in Section 1367(a) and (c) between efficient resolution of related claims and avoidance of unnecessary state-law rulings by the federal courts

The statutory provision at issue in this case, 28 U.S.C. 1367(d), states that, upon the federal court's dismissal of a pendent claim asserted under Section

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[5] Proponents of the supplemental jurisdiction statute urged that the statute be drafted to encourage district courts to dismiss state-law claims that would more appropriately be heard in state court. For example, Judge Joseph F. Weis, Jr., the chairman of the Federal Courts Study Committee, recommended that "when a state claim predominates, the district court should be authorized and encouraged to decline the exercise of supplemental jurisdiction," because "[t]o proceed in the face of state claim predominance would be an affront by a district court to considerations of comity and federalism." *House Hearing* 95.

1367(a), the applicable limitations period "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. 1367(d). The purpose of Section 1367(d) is to remove any artificial disincentive for plaintiffs to file suit in federal court. Section 1367(d) achieves that objective by ensuring that, if a plaintiff's federal-court complaint (including a pendent state-law claim) is filed within the time period allowed by state law for asserting the state-law claim standing alone, the statute of limitations on the pendent claim will not expire during the pendency of the federal-court action. In the event that the state-law claims are dismissed under Section 1367(c), Section 1367(d) holds the plaintiff harmless for invoking federal jurisdiction by allowing the state-law claim to be refiled in state court without being deemed untimely.

Section 1367(d) plays an integral role in ensuring that the balancing of interests accomplished by Section 1367(a) and (c) can operate as Congress intended. Absent the tolling provision, a plaintiff who wished to assert federal-and state-law claims that "derive from a common nucleus of operative fact," *Gibbs*, 383 U.S. at 725, would be forced to choose one of three undesirable options. First, if the plaintiff filed a single federal-court action, invoking the court's pendent-claim jurisdiction under 28 U.S.C. 1367(d), he would run the risk that his state-law claim would be treated as time-barred in state court if the claim were dismissed by the federal court for one of the reasons set forth in Section 1367(c).[6] Second, as the South Carolina Supreme Court

[6] Moreover, to ameliorate the inequity of that result, federal courts might be tempted to retain jurisdiction in cases better left for the state courts. See pp. 24-25, *infra*.

suggested, the plaintiff could "prosecute one action joining all federal and state law claims" by "bring[ing] the action in state court." Pet. App. 10a. By proceeding in that manner, however, the plaintiff would forgo his right to bring his federal claim before a federal forum. Third, if the plaintiff filed separate actions in state and federal courts, the state action might be deemed barred by claim-splitting rules; or the judgment in that suit (if it was allowed to go forward) might precede the resolution of the federal-court action and be given preclusive effect with respect to the disposition of the federal claim. Even if the plaintiff were permitted to litigate each of the two actions to its conclusion, the process would waste the resources of the parties and the courts, and the plaintiff would be denied the right conferred by Section 1367(a) to litigate the entire case in a single federal forum.

Thus, Section 1367(d) ensures that a plaintiff can exercise his *federal* rights to (1) seek federal-court review of a federal cause of action (a right guaranteed, in this case, by 42 U.S.C. 1983 and 28 U.S.C. 1331) and (2) join related state-law claims in a single judicial proceeding (a right guaranteed by 28 U.S.C. 1367(a)), without putting at risk his ability to prosecute his state-law claims to their conclusion. Under the Supremacy Clause, U.S. Const. Art. VI, Cl. 2, a State would be foreclosed from *expressly* conditioning the availability of a state-law cause of action on a plaintiff's agreement to forgo the exercise of federal rights. In *Nash* v. *Florida Industrial Commission*, 389 U.S. 235, 239-240 (1967), for example, this Court held that the State of Florida could not deny unemployment compensation to persons who had filed unfair labor practice charges with the National Labor Relations Board. The Court explained that "Florida should not be permitted to

defeat or handicap a valid national objective by threatening to withdraw state benefits from persons simply because they cooperate with the Government's constitutional plan." *Id.* at 239; see *Terral* v. *Burke Constr. Co.*, 257 U.S. 529, 532 (1922) ("a State may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the State, exact from it a waiver of the exercise of its constitutional right to resort to the federal courts, or thereafter withdraw the privilege because of its exercise of such right"). Similarly here, South Carolina could not make the remedies provided by the State's Tort Claims Act unavailable to persons who file suit in federal court under 42 U.S.C. 1983. Section 1367(d) serves to ensure that the application of state tolling rules does not indirectly produce the same practical effect.

Section 1367(d) also ensures that federal district courts, in deciding whether to retain jurisdiction over pendent state-law claims pursuant to 28 U.S.C. 1367(a), may apply the criteria set forth in Section 1367(c) free from concern that the state-law claims might be dismissed as time-barred if they are refiled in state court. See John B. Oakley, *Prospectus for the American Law Institute's Federal Judicial Code Revision Project*, 31 U.C. Davis L. Rev. 855, 945 (1998) ("Congress clearly intended subsection 1367(d) to facilitate discretionary dismissal under subsection 1367(c) by relieving courts of concerns about the inequitable consequences of state limitations law barring the dismissed claim from refiling."); Denis McLaughlin, *supra*, 24 Ariz. St. L.J. at 983 (Section 1367(d) gives federal courts "the freedom to properly determine the issue of discretionary dismissal solely on the basis of the factors of § 1367(c)"). The possibility that federal district courts might retain jurisdiction over claims that would more appropriately

be litigated in state court, simply to ensure that the plaintiff is not deprived of all judicial redress, is more than theoretical. Before Section 1367(d) was enacted, federal courts frequently and explicitly invoked the possibility that pendent state-law claims might otherwise be time-barred as a factor—even a dispositive factor supporting retention of jurisdiction. See pp. 5-6, *supra*. By removing an artificial disincentive to the dismissal of state-law claims, Section 1367(d) promotes the proper exercise of federal jurisdiction and helps to preserve the balance struck in Section 1367(a) and (c) between the efficient resolution of federal-and state-law claims comprising a single constitutional "case," and the avoidance of "[n]eedless decisions of state law" (*Gibbs*, 383 U.S. at 726) by the federal courts.

2. Section 1367(d) is a constitutionally permissible means of achieving Congress's objectives

a. The Constitution authorizes Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its enumerated powers. U.S. Const. Art. I, § 8, Cl. 18. Under the classic formulation of the authority conferred by the Necessary and Proper Clause, so long as the congressional end is legitimate, "all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819); see, *e.g.*, *Graham* v. *John Deere Co.*, 383 U.S. 1, 6 (1966) ("Congress may, of course, implement the stated purpose of the Framers by selecting the policy which in its judgment best effectuates the constitutional aim."). Because it promotes the proper exercise of federal jurisdiction and furthers the effective operation of the overall scheme established by

28 U.S.C. 1367(a) and (c), Section 1367(d) is a law "necessary and proper for carrying into Execution" Congress's power "[t]o constitute Tribunals inferior to the supreme Court" (U.S. Const. Art. I, § 8, Cl. 9) and to define their jurisdiction within the limits imposed by Article III.[7]

b. Section 1367(d) is minimally intrusive on the State's authority to determine the time and manner in which litigation in the State's courts will be conducted. The tolling provision will preserve a plaintiff's state-law claim only if that claim is asserted in federal court within the limitations period prescribed by *state* law. Thus, Section 1367(d) in no way interferes with the primary function of a statute of limitations—*i.e.*, to ensure that a defendant will know within a specified period whether he has been sued on a particular claim.

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[7] In cases (like this one) in which the jurisdiction of the federal district court in the initial suit is premised on a federal statutory cause of action, Section 1367(d) might also be viewed as a means "necessary and proper" to execute the constitutional grant of authority on which the substantive federal statute is based. Congress's authority under Section 5 of the Fourteenth Amendment (for example) includes not only the power to enact 42 U.S.C. 1983 in the first instance, but also the power to preempt state laws that would penalize or deter individuals in their exercise of rights under Section 1983. Cf., *e.g.*, *Felder* v. *Casey*, 487 U.S. 131 (1988) (state procedural rule held preempted as applied to actions brought in state court under Section 1983). By ensuring that plaintiffs who file Section 1983 actions in federal court are not thereby deprived of avenues of redress otherwise available to them under state law, 28 U.S.C. 1367(d) (as applied in this case) complements and effectuates Section 1983. In its present application, Section 1367(d) may thus be regarded as a "necessary and proper" means of executing Congress's authority under Section 5 of the Fourteenth Amendment, as well as a "necessary and proper" means of carrying into effect Congress's power to establish inferior federal courts and to define their jurisdiction.

See *ALI Study* 454 (principal purposes of a statute of limitations "are amply served by the commencement of an action in a federal court, even if it is ultimately determined that the court lacked jurisdiction"); cf. *Order of R.R. Telegraphers* v. *Railway Express Agency, Inc.*, 321 U.S. 342, 349 (1944) (rationale for statutes of limitations "is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them").

c. Section 1367(d) does interfere with state policy choices to a degree, by requiring that the applicable limitations period be tolled during the period that the state-law claim is pending before the federal court (and for 30 days thereafter), even if state law would prescribe a different result. It is well established, however, that federal preemption of state law generally presents no Tenth Amendment problem. Although "congressional enactments obviously curtail or prohibit the States' prerogatives to make legislative choices respecting subjects the States may consider important, the Supremacy Clause permits of no other result." *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 290 (1981). It is equally clear that state courts may be required to apply federal law. "Federal law is enforceable in state courts" because "the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws 'the supreme Law of the Land,' and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure." *Howlett* v. *Rose*, 496 U.S. 356, 367 (1990); accord *New York* v. *United States*, 505 U.S. 144, 178-179 (1992)

("[f]ederal statutes enforceable in state courts do, in a sense, direct state judges to enforce them, but this sort of federal 'direction' of state judges is mandated by the text of the Supremacy Clause").

The obligation of state courts under the Supremacy Clause extends beyond the duty faithfully to apply federal law in cases that the state court has *chosen* to adjudicate. Under some circumstances, the Supremacy Clause requires in addition that a state court resolve a claim over which it would prefer to decline jurisdiction. "[W]here the general jurisdiction conferred by the state law upon a state court embraced otherwise causes of action created by an act of Congress, it would be a violation of duty under the Constitution for the court to refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers." *Minneapolis & St. Louis R.R.* v. *Bombolis*, 241 U.S. 211, 222 (1916); accord, *e.g.*, *Howlett*, 496 U.S. at 369-381; *Testa* v. *Katt*, 330 U.S. 386, 389-394 (1947); *Mondou* v. *New York, New Haven & Hartford R.R.*, 223 U.S. 1, 57-58 (1912). Thus, the fact that Section 1367(d) requires state courts to entertain some suits that they would otherwise decline to adjudicate (at least at that time) does not render the law invalid.

Most specifically, this Court's decision in *Stewart* v. *Kahn*, 78 U.S. (11 Wall.) 493 (1870), establishes that Congress may, in appropriate circumstances, require state courts to apply a federal tolling rule in adjudicating state-law causes of action. The federal law at issue in *Stewart* was enacted in 1864 and provided that applicable limitations periods in civil and criminal cases would be tolled for the period during which the actions could not be prosecuted because of the Civil War. See

id. at 494, 504-505. The case involved a contract action filed in Louisiana state court. *Id.* at 500-501. This Court first held that the statute applied to actions brought in state as well as federal courts. See *id.* at 505-506. The Court then rejected the argument that the law, so construed, exceeded Congress's authority under the Constitution. See *id.* at 506-507.

In sustaining the validity of the federal tolling provision, this Court observed that "Congress is authorized to make all laws necessary and proper to carry into effect the granted powers." 78 U.S. (11 Wall.) at 506. The Court concluded that Congress's war power "carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress. This act falls within the latter category. The power to pass it is necessarily implied from the powers to make war and suppress insurrections." *Id.* at 507. The Court rejected the defendant's contention that "as to matters not intrusted to the government of the United States, the State courts are considered as courts of another sovereignty. As Congress cannot create the State courts, as it cannot establish the ordinary rules of property, obligations, and contracts, * * * it cannot prescribe rules of proceeding for such State courts." *Id.* at 498 (footnote omitted) (argument of counsel). The Court's decision in *Stewart* makes clear that Congress possesses constitutional authority to preempt the tolling rules that would otherwise govern state-law causes of action filed in state court, where such preemption is a "necessary and proper" means of carrying into effect Congress's enumerated powers.

When the American Law Institute recommended the enactment of a tolling rule (see p. 10 & note 3, *supra*) similar to the provision later enacted as Section 1367(d),

it invoked *Stewart* as authority for the constitutional validity of its proposal. See *ALI Study* 454; cf. pp. 10-11, *supra*. The *ALI Study* also explained that Congress had tolled the statutes of limitations pertaining to railroads during the period of federal control during World War I, and pertaining to servicemen during both World Wars, and that the lower federal and state courts had sustained those provisions. See *ALI Study* 454 & nn. 2, 3 (citing cases). Indeed, the Soldiers' and Sailors' Civil Relief Act of 1940 continues to provide that "[t]he period of military service shall not be included in any period now or hereafter to be limited by any law, regulation, or order for the bringing of *any action* or proceeding *in any court* * * * by or against any person in military service." 50 U.S.C. App. 525 (emphasis added).

The tolling statutes described above have served to carry into effect Congress's Article I war powers, which are not implicated by Section 1367(d). But as the *ALI Study* explained, "every power granted to the federal government carries with it a large measure of discretion as to the selection of means appropriate to its exercise." *ALI Study* 455. Congress's general constitutional authority to prescribe the jurisdiction of the federal courts (and, as relevant in this case, to provide a cause of action to redress constitutional violations committed by persons acting under color of state law, see note 7, *supra*) amply supports the enactment of Section 1367(d). That provision serves to ensure that federal courts may exercise their discretion under Section 1367(c) without reference to the litigants' state-court rights, and that petitioner's exercise of a federal right does not subject him to the loss of rights conferred by state law.

The tolling provision contained in Section 1367(d), moreover, is considerably narrower than the statutes

that Congress has previously enacted under its war powers. The tolling period mandated by Section 1367(d) commences only when the defendant is notified, by the filing of the federal-court action, that litigation against it has commenced. Cf. *ALI Study* 455. The provision is thus "a far cry from notifying a person of a lawsuit for the first time long after the governing statute of limitations has run—a measure that may be justified by the existence of a national emergency but that is not called for or appropriate" to ensure the effective operation of the federal supplemental jurisdiction statute. *Ibid.*

C. Section 1367(d) Is Constitutional As Applied To State-Law Claims Against A County Defendant

The Supreme Court of South Carolina did not question the constitutionality of Section 1367(d) as it applies to suits against private defendants. The court "conclude[d], however, that, as applied to the States and their political subdivisions in tort actions, passage of § 1367(d) is not 'proper' within the meaning of the Necessary and Proper Clause." Pet. App. 7a. The court explained that in its view, "the tolling provision interferes with the State's sovereign authority to establish the extent to which its political subdivisions are subject to suit." *Ibid.*; see *id.* at 9a ("in tort actions against political subdivisions, § 1367(d) extends the waiver of the sovereign immunity of political subdivisions, thereby interfering with the State's sovereignty in violation of the Tenth Amendment and the Necessary and Proper Clause"). This Court, however, has already held in *Raygor* that Section 1367(a) and (d) do not even apply to suits against nonconsenting States

or (as in *Raygor* itself) arms of the State.[8] Accordingly, the decision below establishes a special exception from the operation of a federal statute for counties and municipalities based on principles of South Carolina law. The state court's analysis is misconceived.

1. Local governments have no constitutional immunity from private suits authorized by Congress

Whether and to what extent respondent and other local governmental bodies enjoy "sovereign immunity" as a matter of *state* law is for South Carolina officials to decide. However, counties and municipalities have no immunity as a matter of *federal* law from such private suits as Congress chooses to authorize. An "important limit to the principle of sovereign immunity is that it bars suits against States but not lesser entities. The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State." *Alden* v. *Maine*, 527 U.S. 706, 756 (1999); see, *e.g.*, *Board of Trs. of the Univ. of Ala.* v. *Garrett*, 531 U.S. 356, 368-369 (2001) (although cities and counties are state actors for Fourteenth Amendment purposes, "the Eleventh Amendment does not extend its immunity to units of local government"); *Mt. Healthy City Bd. of Educ.* v. *Doyle*, 429 U.S. 274,

[8] While state law informs the inquiry, the determination whether a particular governmental entity is an arm of the State for federal immunity purposes presents a question of federal law. *Regents of the Univ. of Cal.* v. *Doe*, 519 U.S. 425, 429 n.5 (1997). Although the opinion below refers to respondent loosely as a "political subdivision" (see Pet. App. 9a, 10a), it is clear that respondent, as a county, does not constitute an arm of the State for federal immunity purposes. By allowing state immunity principles to trump federal law, the Supreme Court of South Carolina committed an error analogous to that corrected by this Court in *Howlett*. Compare *Howlett*, 496 U.S. at 375-379.

280 (1977) ("The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, * * * but does not extend to counties and similar municipal corporations.") (citations omitted).

The South Carolina Supreme Court's reference to "the State's sovereign authority to establish the terms under which its political subdivisions may be sued" (Pet. App. 9a-10a) thus posits a constraint on *federal* power that does not exist. Because respondent has no federal constitutional immunity, its susceptibility to private suits is subject to congressional control, notwithstanding the contrary preferences of state officials. As a general matter, of course, state rather than federal law defines the conditions under which local governments may be sued in state court on state-law causes of action. That is equally true, however, of state-law claims against private defendants: Congress rarely has occasion to address the manner in which such litigation is conducted in the state courts. But when Congress reasonably concludes that a federal rule governing some aspect of state-court proceedings is an appropriate means of protecting the federal-court jurisdictional scheme or furthering some other legitimate federal interest, Congress may require state courts to enforce the federal rule. Through ordinary operation of the Supremacy Clause, any contrary state law—including state-law immunity principles—must yield to the federal directive. Section 1367(d) reflects Congress's judgment that a limited exception to the state-law tolling rules that would otherwise govern is necessary to ensure the achievement of federal objectives. If Section 1367(d) is a permissible exercise of congressional authority as applied to private defendants (see pp. 21-31, *supra*), respondent and other local governments

have no distinct *federal* status that would render the law invalid as applied to them.

2. Congress's reasons for enacting Section 1367(d) apply with full force to suits against local governments

The rationales that generally underlie Section 1367(d) are fully applicable to suits against local governments. Because counties and municipalities have no constitutional immunity from private suits, Congress can and often does authorize such suits to be filed against local governments in federal court. In the present case, for example, it is undisputed that respondent was a proper defendant in petitioner's suit under 42 U.S.C. 1983, see *Monell* v. *New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978), and that petitioner's Section 1983 claim fell within the jurisdiction of the federal district court. And because the applicability of Section 1367(a) to suits against local governments cannot plausibly be disputed, petitioner was entitled to bring her related state-law claims as part of the federal-court action. The South Carolina Supreme Court's refusal to enforce the federal tolling provision caused petitioner to forfeit her state-law claims as a consequence of exercising her federal rights—precisely the hardship that Section 1367(d) was intended to prevent.

3. The Court's decision in* Raygor *supports the application of Section 1367(d) to counties and municipalities

In *Raygor*, this Court held, as a matter of statutory construction, that neither Section 1367(a)'s grant of pendent-claim jurisdiction nor Section 1367(d)'s tolling provision applies to claims against nonconsenting States that are dismissed on Eleventh Amendment grounds. 122 S. Ct. at 1005-1007; see pp. 11-12, *supra*.

Respondent contends (Br. in Opp. 2, 4) that the South Carolina Supreme Court's decision in this case is a "natural and logical extension" of the holding in *Raygor*. That argument ignores both the specific reasoning of the Court's *Raygor* decision and the critical differences between States and counties.

In *Raygor*, this Court first held that, under the clear-statement rule of *Blatchford* v. *Native Village of Noatak*, 501 U.S. 775 (1991), Section 1367(a) does not apply to nonconsenting States. The Court explained that, despite the apparent breadth of Section 1367(a)'s grant of supplemental jurisdiction over "all civil actions," Section 1367(a)'s lack of any specific reference to state defendants precluded application of that provision to state-law suits against nonconsenting state entities. See 122 S. Ct. at 1005 (citing *Blatchford*). Only after finding Section 1367(a) inapplicable to claims against nonconsenting States did the Court consider whether, nonetheless, claims "asserted under § 1367(a) but subsequently dismissed on Eleventh Amendment grounds" fall within Section 1367(d)'s tolling provision. Here, by contrast, respondent does not and could not identify any reason why Section 1367(a) would not apply to counties and municipalities in the same manner it applies to non-governmental defendants. Because the provisions of Section 1367 that govern federal-court proceedings apply in the same manner to respondent as to private defendants, there is no reason why Section 1367(d) should apply differently (or raise any county-specific constitutional difficulties) when a pendent state-law claim is refiled in state court.

This Court in *Raygor* then held that Section 1367(d), like Section 1367(a), does not apply to state-law claims against nonconsenting States. In so holding, the Court relied on two well-established and closely related

principles: (a) that nonconsenting States generally enjoy a constitutional immunity from private suits (see 122 S. Ct. at 1005-1006), and (b) that, absent clear evidence of congressional intent, federal statutes will not be read either to authorize private suits against States and state agencies or to upset the federal-state balance (see *id.* at 1006). Neither of those principles assists respondent here. Counties and municipalities have no federal constitutional immunity from private suits. See pp. 32-33, *supra*. Nor does any clear-statement rule require Congress to refer specifically to local governments in order to authorize private suits against them. Compare *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989) (a State is not a "person" subject to suit under 42 U.S.C. 1983), with *Monell*, 436 U.S. at 683-689 (a city is a "person" subject to liability under Section 1983). Likewise suits against local governments do not implicate the same federalism concerns as suits against nonconsenting States. See *Will*, 491 U.S. at 67 n.7, 70.

CONCLUSION

The judgment of the South Carolina Supreme Court should be reversed.

Respectfully submitted.

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